

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
ELOISA MARQUEZ, RICHARD MARTINEZ,
DESTINEY MARTINEZ and ANDRELLITA MARTINEZ

Plaintiffs,

Case No.: 1:15 CV 00787 KBM-LF

vs.

OFFICER NICHOLAS LEVINE, in his official capacity as a
commissioned law enforcement officer and individual capacity,
OFFICER RYAN KUEHL, in his official capacity as a
Commissioned law enforcement officer and individual capacity, And
the NEW MEXICO STATE POLICE DEPARTMENT,

Defendants.

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

COME NOW Plaintiffs, by and through their attorneys of record, Murray Law Firm (Pilar Tirado Murray) and pursuant to Fed. R. Civ. P. 26(c), and hereby state the following in support of their Motion for Protective Order:

1. State Defendants object to the disclosure of their personnel files, internal affairs review files, and job-related medical/psychological records and assessments while Plaintiffs contend that these documents are discoverable pursuant to Fed. Rule Civ. Proc. 26 and the public policies underlying liberal discovery. *See Denver Policemens' Protective Ass'n v. Lichtenstein, 660 F.2d 432 (10th Cir. 1981); Compare, State v. Pohl, 1976-NMCA-089, 89 NM 523, 554, 4 P.2d 98 (where officer was involved in two prior instances of alleged misconduct, there is a sufficient showing to provide inspection of police personnel records).*

2. Accordingly, Plaintiffs request that the Court order State Defendants to produce the above described documents (with redaction of home addresses, home phone numbers, and social security numbers), subject to the following reciprocal terms and conditions:

- A. Plaintiffs and their respective attorney of record will return the contents of the Defendant Officer Levine and Defendant Officer Kuehls' private personnel, internal affairs, job-related medical/psychological files at the resolution of this lawsuit;
- B. Plaintiffs and their respective attorney of record will purge all copies of the contents of the above-identified documents at the resolution of this lawsuit;
- C. Plaintiffs and their respective attorney of record will not disclose or produce the contents of the above-identified documents to any non-party at any time, except for investigators, any experts and/or consultants retained by the parties in this matter;
- D. Plaintiffs and their respective attorney of record will not attach any of the contents of any of the above-described documents as exhibits to depositions or to motions filed with this Court unless the filing includes a proper Motion and Order to Seal.
- E. Both parties reserve the right to object to the disclosure of documents constituting work product and/or attorney-client communication. Any such claims of privilege may be challenged by either Plaintiffs or Defendants in accordance with the Federal Rules of Civil Procedure.
- F. Plaintiffs and their respective attorney of record will only use the information contained in the above-identified documents for purposes of this lawsuit only and agree that this information is not to be used or disclosed in any other proceedings, litigation, depositions, and/or hearings which are not a part of this action.
- G. Attorneys for State Defendants will produce their clients' complete personnel files subject only to the redactions identified in section .2 above, internal affairs files from inception of each officer's employment with the NMSP to the present date, job-related medical and psychological records and assessments within three (3) days of the date of entry of this order, and will supplement such production on a rolling basis as to all further related documents pursuant to Fed. R. Civ. Pro. 26 and the rules of discovery as they become known to State Defendants.

3. Plaintiffs also desire to protect their private healthcare information by limiting the disclosure of their medical and psychological records (“Plaintiffs’ Medical and Psychological Records”).

Plaintiffs will produce this information under the following, mutually-agreed terms:

- H. State Defendants and their respective attorneys of record will return the contents of all of all of the Plaintiffs’ Medical and Psychological Records at the resolution of this lawsuit;
- I. State Defendants and their respective attorney of record will purge all copies of the contents of all of the Plaintiffs’ Medical and Psychological Records at the resolution of this lawsuit;
- J. State Defendants and their respective attorneys of record will not disclose or produce the contents of any of the Plaintiffs’ Medical and Psychological Records to any non-party at any time, except for investigators, any experts and/or consultants retained by the parties in this matter;
- K. State Defendants and their respective attorneys of record will not attach any of the contents of the Plaintiffs’ Medical and Psychological Records as exhibits to depositions or to motions filed with this Court unless accompanied by a proper Motion and Order to Seal;
- L. State Defendants and their respective attorneys of record will only use the information contained in Plaintiffs’ Medical and Psychological Records for purposes of this lawsuit and thus, will not use or disclose this information in any other proceedings, litigation, depositions, and/or hearings which are not a part of this action.
- M. Counsel for Plaintiffs affirms that she has produced all of Plaintiffs’ Medical and Psychological Records presently known to her at this time and that this agreement applies to those records as to any future records to be provided. Plaintiffs will supplement their Initial Disclosures on a rolling basis as they become known to Plaintiffs congruent with Fed. Rule Civ. Pro. 26 and the rules of discovery.

WHEREFORE, Plaintiffs respectfully request that the Court enter a protective order which complies with the agreed upon foregoing terms and conditions.

Defendants have been apprised of, and object to, the language in Plaintiffs' proposed motion.

Respectfully submitted by:

MURRAY LAW FIRM

By: /s/Pilar Tirado Murray

Pilar Tirado Murray, Esq.

Murray Law Firm

P.O. Box 717

El Prado, NM 87529

T: (575) 779-7054

E: jurisprudence@writeme.com

Attorneys for Plaintiffs